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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 472

PANHANDLE EASTERN PIPE LINE COMPANY, *Petitioner*,

v.

MICHIGAN CONSOLIDATED GAS COMPANY, MICHIGAN WISCONSIN PIPE LINE COMPANY, AMERICAN LOUISIANA PIPE LINE COMPANY, ET AL., *Respondents*.

On Petition for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS, MICHIGAN CONSOLIDATED GAS COMPANY, MICHIGAN WISCONSIN PIPE LINE COMPANY AND AMERICAN LOUISIANA PIPE LINE COMPANY, IN OPPOSITION

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November 7, 1960

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INDEX

	Page
Opinions Below	1
Questions Presented	2
Statute and Regulations Involved	3
Statement	3
Argument	11
I. The Court of Appeals Had Full Authority To Direct the Commission To Consider the Settlement Proposal Upon Remand	13
II. The Court's Treatment of the "Demand Capacity Ratio" Question Was Entirely Fair and Proper	17
Conclusion	19

CITATIONS

Cases:

American Louisiana Pipe Line Company, et al., Docket Nos. G-10296, et al., 20 F.P.C. 851	2
American Louisiana Pipe Line Company, et al., Docket Nos. G-10396, et al., 21 F.P.C. 218	2
American Louisiana Pipe Line Company, et al., Docket Nos. G-10396, et al., 22 F.P.C. 82	2
American Louisiana Pipe Line Company, Opinion No. 276 (October 1, 1954)	6
Michigan Wisconsin Pipe Line Company, Docket No. G-669, 6 F.P.C. 1 (1947)	5
Michigan Wisconsin Pipe Line Company, Docket No. G-669, 6 F.P.C. 58 (1947)	5
Panhandle Eastern Pipe Line Company v. Federal Power Commission, 169 F. 2d 881 (App. D.C. 1948), cert. den., 335 U.S. 854	5
Panhandle Eastern Pipe Line Company, v. Federal Power Commission, 219 F. 2d 729 (3rd Cir. 1955), cert. den., 349 U.S. 945	6

Page

Panhandle Eastern Pipe Line Company v. Federal Power Commission, 236 F. 2d 289 (1956) 5
Panhandle Eastern Pipe Line Company v. Michigan Public Service Commission, 341 U.S. 329 (1951) .. 4
Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana, 332 U.S. 507 (1947) .. 4
Sun Oil Company v. Federal Power Commission, — U.S. —, 4 L. ed. 2d 1639 5
Sunray Mid-Continent Oil Company v. Federal Power Commission, — U.S. —, 4 L. ed. 2d 1623 5

STATUTES:

Natural Gas Act of 1938 (52 Stat. 821, 15 U.S.C. § 717r) 3
Sec. 7(b) 2, 5, 6
Sec. 19(b) 2, 15

Rules of Practice and Procedure of the Federal Power Commission, 18 C.F.R. Chapter I

Sec. 1.18 ..... 3, 15
Sec. 1.18(c) 8
Sec. 1.32 3
Sec. 1.34 3

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OPINIONS BELOW

The opinions of the United States Court of Appeals for the District of Columbia Circuit (Pet. App. I, II, V) are not yet officially reported. The opinions and

orders of the Federal Power Commission here involved (Pet. App. III, IV, VI) are reported at 20 F.P.C. 851, 21 F.P.C. 218 and 22 F.P.C. 82.

QUESTIONS PRESENTED

The Federal Power Commission issued an order under Section 7(b) of the Natural Gas Act authorizing Petitioner, an interstate pipeline company, to abandon its deliveries of natural gas to a distribution company on the ground that Petitioner's other customers had a greater need for the gas to serve domestic and space heating loads. The Commission rejected Petitioner's proposed plan of allocating the abandonment gas among its other customers and the Commission directed that a new plan of distribution be submitted which would carry out the stated objectives of the order. Thereafter, by a second order, the Commission denied rehearing; rejected a revised allocation plan filed by Petitioner; refused to consider a "settlement proposal" submitted by the distribution company; and scheduled a further hearing to determine the allocation to be made of the abandonment gas. Following the further hearing, from which the distribution company was excluded, the Commission by a third order approved the third allocation plan filed by Petitioner. The questions are:

(1) Whether the Court below, in setting aside the abandonment order on various grounds, also had jurisdiction, upon a petition for review timely filed under Section 19(b) of the Act, to set aside the second order, which rejected the "settlement proposal" submitted by the distribution company, and to direct that such proposal be considered in the remanded proceedings before the Commission?

(2) Whether, having decided to set aside the abandonment order on several grounds, it was appropriate for the Court below to refrain from passing on the distribution company's objections to the Commission's use of a new abandonment criterion in its order denying rehearing, so that the initial consideration of the objections would be by the Commission in the remanded proceedings?

STATUTE AND REGULATIONS INVOLVED

Pertinent provisions of the Natural Gas Act (52 Stat. 821, 15 U.S.C. § 717r) and the rules of Practice and Procedure of the Federal Power Commission (18 C.F.R. § 1.18, § 1.33, § 1.34) are set forth in Appendix VII to the Petition for Certiorari.

STATEMENT

Petitioner, Panhandle Eastern Pipe Line Company ("Panhandle"), seeks review of a decision of the United States Court of Appeals for the District of Columbia Circuit setting aside certain orders of the Federal Power Commission authorizing Panhandle to abandon service to Michigan Consolidated Gas Company ("Michigan Consolidated") and remanding the cause to the Commission for reconsideration in the light of the Court's opinion. This brief in opposition is submitted by respondents, Michigan Consolidated, Michigan Wisconsin Pipe Line Company ("Michigan Wisconsin") and American Louisiana Pipe Line Company ("American Louisiana").

Michigan Consolidated is a public utility company engaged in the distribution and sale of natural gas in Detroit, Ann Arbor and a number of other cities in Michigan. In 1955 Michigan Consolidated entered into

a contract with Panhandle for the purchase of natural gas. Panhandle owns and operates a pipeline system extending from the Panhandle-Hugoton Field of Texas to northern termini in Michigan and Ohio. As amended and supplemented, the contracts between the parties provided for maximum daily deliveries of 125,000 Mcf at Detroit and 2,000 Mcf per day at Ann Arbor.

During the early 1940's, Michigan Consolidated attempted without success to obtain increased deliveries from Panhandle to meet the rapidly growing market for natural gas in Michigan. However, Panhandle had then embarked upon a program of making direct sales to industries located in the service areas of its distribution company customers. Such sales are not subject to regulation as to price under the Natural Gas Act, and Panhandle saw an opportunity thereby to make profits in excess of those permitted for its regulated operations.[1]

Desiring to take over Michigan Consolidated's industrial customers in the Detroit area, Panhandle refused to increase its deliveries to Michigan Consolidated.[2] Faced with this intolerable situation, Michigan Consolidated's parent, American Natural Gas Company, organized Michigan Wisconsin to bring new supplies to the gas-starved midwest area. While Panhandle vigorously opposed Michigan Wisconsin's application for a certificate, claiming a vested right to remain the sole supplier of natural gas in Detroit, the Commission found that public convenience and necessity required

[1] See *Panhandle Eastern Pipe Line Company* v. *Public Service Commission of Indiana*, 332 U.S. 507, 509, fn. 3 (1947).

[2] See *Panhandle Eastern Pipe Line Company* v. *Michigan Public Service Commission*, 341 U.S. 329, 333-36 (1951).

the issuance of a certificate to Michigan Wisconsin. However, the Commission specifically recognized and preserved Panhandle's right to participate in the future growth of Detroit and Ann Arbor markets.[3]

Michigan Wisconsin's line was constructed in 1948 and 1949 and its capacity doubled by 1950. In that year, Panhandle began its campaign to reduce and ultimately to abandon service to Michigan Consolidated. After undertaking to cancel its contracts with Michigan Consolidated, which had been filed with the Commission as rate schedules following the enactment of the Natural Gas Act in 1938, Panhandle filed an application with the Commission under Section 7(b) of the Act to reduce its deliveries to Michigan Consolidated at Detroit from 125,000 Mcf to 87,500 Mcf per day. Panhandle's application was denied by the Commission and in affirming that order the United States Court of Appeals for the Third Circuit found that Panhandle's principal argument was "so wholly lacking in merit as to border on the frivolous." *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission*, 236 F. 2d 289, 293 (1956).[4]

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[3] *Michigan Wisconsin Pipe Line Company, et al.*, 6 F.P.C. 1 (1947); 6 F.P.C. 58 (1947), affirmed, *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission*, 169 F. 2d 881 (App. D.C. 1948), *cert. den.* 335 U.S. 854.

[4] Last term this Court had occasion to emphasize the continuing obligation of a natural gas company to render service after termination of its contract obligation. *Sunray Mid-Continent Oil Company* v. *Federal Power Commission*, ... U.S. ...., 4 L. ed. 2d 1623; *Sun Oil Company* v. *Federal Power Commission*, ... U.S. ...., 4 L. ed. 2d 1639. This Court was divided as to whether that obligation extended to producers but was unanimous with respect to the continuing obligation of a pipeline company. See 4 L. ed. 2d at 1643-6.

Faced with the rapidly increasing needs of the markets in Michigan and Wisconsin and Panhandle's continued refusal to provide any additional supplies, American Natural in 1953 organized its second major pipeline, American Louisiana, with an initial capacity of 300,000 Mcf per day. Again, Panhandle resisted the issuance of a certificate, but again the Commission found that public convenience and necessity required the issuance of a certificate to American Louisiana to meet a "crying demand" for the gas.[5] Even before completing construction of the line, American Louisiana applied in May of 1956 for authority to expand the capacity of its pipeline by 100,000 Mcf per day.

Once more Panhandle intervened in opposition to American Louisiana's certificate application, this time coupling its petition to intervene with an application under Section 7(b) of the Act to abandon entirely its service to Michigan Consolidated. In its abandonment application, Panhandle emphasized the shortages of gas in the markets it serves as compared with those served by the American Natural system and based its request on the allegedly greater needs of its customers other than Michigan Consolidated for gas to meet domestic and space heating requirements.[6] However,

[5] *American Louisiana Pipe Line Company*, Opinion No. 276 (October 1, 1954), affirmed, *Panhandle Eastern Pipe Line Company v. Federal Power Commission*, 219 F. 2d 729 (3rd Cir. 1955), *cert. den.*, 349 U.S. 945.

[6] The shortage of gas in the areas served by Panhandle has admittedly resulted from its long-standing refusal to expand its pipeline capacity. This refusal, in turn, results from Panhandle's dissatisfaction with the regulatory framework in which it must operate under the Natural Gas Act. The Commission and the Court below both recognized that "Panhandle's failure to expand implements its deliberate aim to avoid the Commission's rate regulations". Pet. App. 6a.

the hearings clearly developed the fact that, while Panhandle's other customers had considerable need for additional gas during the winter to attach additional space heating loads, they had little use for additional gas during the summer.

On the other hand, Michigan Consolidated, which operates large underground storage fields, had for many years been purchasing 127,000 Mcf from Panhandle every day of the year, storing the gas purchased during the summer for winter use. By abandoning all service to Michigan Consolidated, Panhandle would thus have available large volumes of summer or "off-peak" capacity which its other customers could not use and which would then be available for direct sales to industry at unregulated prices. As the Court below noted, "There are strong indications that one of Panhandle's primary purposes in seeking abandonment is to shift gas from regulated to unregulated sales" (Pet. App. 6a).[7]

After extended hearings, the Presiding Examiner who had heard the evidence issued a decision denying Panhandle's application to abandon service to Michigan Consolidated. However, the Commission, one member not participating and another favoring only partial abandonment, issued a decision and order on December 19, 1958, reversing the Examiner and authorizing Panhandle to abandon service to Michigan Consolidated (Pet. App. 38a-52a).

The Commission based its decision principally upon a comparison of space heating saturations. By com-

[7] Panhandle's abandonment application had itself stated that one of the purposes of abandonment would be to permit Panhandle to compete with Michigan Consolidated for industrial sales in Detroit (R. 1656).

paring the average space heating saturations of Panhandle's customers (excluding two customers with very high saturations), the Commission concluded that Panhandle's customers had greater need for the gas than did Michigan Consolidated and accordingly granted the abandonment. However, the Commission recognized that Panhandle's proposed plan of allocation of the abandonment gas would have resulted in making a portion of the gas available for sale by Panhandle directly to industries. The Commission's order therefore directed Panhandle within 30 days to file a new allocation plan that would "provide that the gas should be sold for resale primarily to domestic and commercial consumers" (Pet. App. 50a).

Michigan Consolidated and numerous other parties filed timely applications for rehearing. Shortly thereafter, Panhandle filed its revised plan of allocation of the abandonment gas in response to the direction in the Commission's order of December 19, 1958. Analysis of that plan showed immediately that it was subject to the same defects as the plan previously rejected by the Commission. Like the first plan, Panhandle's second proposal would have made a large portion of the abandonment gas available for direct industrial sales by Panhandle rather than distributing the gas to its utility customers for resale "primarily to domestic and commercial consumers" and was thus inconsistent with the abandonment order.

Accordingly, Michigan Consolidated, in an effort to avoid further controversy and litigation, filed a "Proposal Under Section 1.18(c) of the Commission's Rules of Practice and Procedure." The basis of the proposal was the fact that, while Panhandle's other customers

needed the additional winter deliveries the abandonment gas would provide, they simply could not use the full volumes of abandonment gas during off-peak, summer periods, whereas Michigan Consolidated could readily do so.

Michigan Consolidated therefore proposed to purchase the same *annual* volumes from Panhandle as before but to do so during off-peak periods, utilizing its underground storage fields to store the gas for winter use. Michigan Consolidated would then relinquish its right to deliveries during peak winter periods so as to make the 127,000 Mcf per day of capacity available for Panhandle's other customers for domestic and commercial uses. This proposal was based upon and was in full accord with the announced objective of the Commission's order of December 19, 1958.[2]

On February 13, 1959,[3] the Commission issued an order which (1) denied all applications for rehearing; (2) refused to consider Michigan Consolidated's settlement proposal "whatever its virtues" because it was not acceptable to Panhandle and some of its customers;[4] and (3) rejected Panhandle's revised plan of allocation on the ground that it "makes no real attempt to meet the standards of our order" (Pet. App. 70a-

[2] In submitting its settlement proposal Michigan Consolidated did not waive the position it had taken in its application for rehearing of the December 19, 1958 order and its right to seek review of that order, in the event the Commission did not act favorably on the proposal (R. 1899).

[3] Commissioner Connole dissented from this conclusion, while Commissioner Kline reiterated his view that only a partial abandonment should have been permitted but concurred in the rejection of the proposal (Pet. App. 73a-76a). Commissioner Hussey did not participate. Thus, ultimately, only two of the five commissioners favored total abandonment.

71a). The Commission thereupon stayed the effective date for the abandonment of service and set a hearing for June 16, 1959 "to determine an appropriate plan for the allocation of such gas" (*Id.*, 72a). However, the Commission stated that the members of the American Natural system and their customers, including Michigan Consolidated, would not be permitted to participate in that hearing (*Id.*, 71a).

Michigan Consolidated filed an application for rehearing of the February 13, 1959 order and filed timely petitions to review that order (No. 15,344 below) as well as the December 19, 1958 abandonment order (No. 14,975 below).

In the meantime, Panhandle had filed a third proposed plan of allocation of the abandonment gas. While this plan was subject to the same defects as Panhandle's two earlier plans, it was approved by the Commission's order of July 16, 1959 (Pet. App. 83a-87a) after an abbreviated two day hearing, from which Michigan Consolidated was excluded, upon the hearsay testimony of Panhandle's sales manager that he had been assured by its customers that "virtually all" of the abandonment gas would be purchased for resale primarily to domestic and commercial consumers (R. 1343a-s).[10] After applying for rehearing, Michigan Consolidated filed a petition for review of that order (No. 15,358 below).

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[10] In an order issued September 21, 1960, directing Panhandle to resume deliveries to Michigan Consolidated on an interim basis following remand by the Court of Appeals, the Commission found, as Michigan Consolidated had predicted, that the abandonment had resulted in the availability to Panhandle of substantial volumes of off-peak gas which its utility customers could not use

On April 29, 1960 the Court below issued the first of its three opinions in which it set aside (in No. 14,975) the abandonment order of December 19, 1958 on a number of separate grounds and remanded the cause to the Commission for further consideration in the light of the Court's opinion. The Court also set aside (in No. 15,144) the February 13, 1959 order which had rejected Michigan Consolidated's "settlement proposal", and the Court stated that the Commission should consider that proposal on its merits in the remanded proceedings (Pet. App. 1a-33a).

On July 11, 1960 the Court issued a supplemental opinion in which it discussed and rejected the contentions advanced in the Commission's petition for modification of the opinion and rehearing and in Panhandle's petition for rehearing (Pet. App. 34a-37a).[1] On the same day the Court issued a separate opinion (in No. 15,358) setting aside the July 16, 1959 order insofar as that order allocated the 127,000 Mcf per day of abandonment gas (Pet. App. 77a-82a).

Panhandle now seeks certiorari to review two points in the Court's decision, both of which were correctly decided upon the facts of the case and neither of which, in any event, would effect in the slightest the lower Court's disposition of the case.

ARGUMENT

Panhandle asserts two grounds for the issuance of a writ of certiorari: (1) that the conclusion of the Court below that the Commission should have considered Michigan Consolidated's settlement proposal was er-

[1] Panhandle's petition for rehearing *en banc* was denied by the full Court (Pet. App. 38a).

roneous and should be reviewed in the exercise of this Court's supervisory powers over lower courts; and (2) that the Court of Appeals erred in referring back to the Commission for its initial consideration the objections that had been raised by Michigan Consolidated to the Commission's use of a so-called "capacity-demand ratio" test in its February 13, 1959 order denying rehearing. Panhandle does not even claim a conflict of decisions, nor is there the faintest indication that any substantial or important question is presented under the Natural Gas Act. The petition represents nothing more than the usual predisposition of a disappointed litigant to seek further review in this Court of an adverse decision.

Before turning specifically to the points raised by Panhandle, we should point out that the Court of Appeals' reversal of the abandonment order was based upon a number of grounds, only two of which are involved in Panhandle's petition. While fully recognizing the limitations upon its review of administrative action, the Court found that the Commission had seriously prejudiced the interests of Michigan Wisconsin's customers by failing to consider their needs in applying the test of relative space heating saturations (Pet. App. 18a-22a); that the Commission did not satisfactorily explain or justify its decision to authorize abandonment on the basis of system-wide averages, rather than the needs of specific communities (*Id.*, 22a-23a); that the Commission's action in appropriating, in

[12] In its Statement of the Case Panhandle makes intemperate and captious criticisms of the Court's conclusion in this respect (Pet. 10-11), but since the petition for certiorari does not claim error or seek review on that account, it is unnecessary to point out the invalidity of Panhandle's statements.

this proceeding, gas that had been reserved for other customers in a separate and unrelated proceeding raised serious questions of due process which did not have to be decided because of the remand for further proceedings (*Id.*, 27a-28a); and that the Commission's conclusions regarding the alleged advantages of separation of the Panhandle and Michigan Consolidated systems were not supported by adequate findings (*Id.*, 29a-32a). None of these points is challenged by Panhandle and each requires remand and further proceedings before the Commission.

Thus, the effect of further review in this Court would be merely to delay the effective resolution of this matter, which is even now before the Commission for its determination upon the remand. And the effect of a decision that the Commission could not consider Michigan Consolidated's settlement proposal upon the remand would be to prevent consideration of a proposal which, as the Court below pointed out, "promises to fulfill the Commission's announced objectives of distributing gas to this consuming public on the basis of need, even more fully than total abandonment" (*Id.*, 33a). The absurd practical consequences of the relief sought by Panhandle simply emphasize the error in its legal position, which we shall now briefly consider.

I.

THE COURT OF APPEALS HAD FULL AUTHORITY TO DIRECT THE COMMISSION TO CONSIDER THE SETTLEMENT PROPOSAL UPON REMAND

Panhandle's contention that neither the Commission nor the Court of Appeals had jurisdiction to consider Michigan Consolidated's settlement proposal completely misconstrues the basis of the Court's action and the Commission's authority under the Natural Gas Act.

In the first place, the settlement proposal did not seek rehearing or reconsideration of the Commission's December 19, 1958 abandonment order. On the contrary, the settlement proposal expressly accepted as its premise the two propositions upon which that order was founded: (1) that based upon relative space heating saturations Panhandle's customers needed the gas more than Michigan Consolidated during peak periods in the winter; and (2) that the abandonment gas must be sold for resale (i.e., to utility customers rather than direct sale industrial customers) primarily for domestic and commercial uses. The settlement proposal, by providing for the relinquishment of winter gas to Panhandle's other customers and the delivery of off-peak gas to Michigan Consolidated for injection into its storage fields and subsequent sale to its space heating customers provided a feasible means for accomplishing both of those objectives.

In the second place, the proposal was made at an entirely appropriate and timely point. The December 19, 1958 abandonment order had just been issued, setting forth the standards which were to govern the distribution of the abandonment gas and rejecting Panhandle's first plan for allocation of the abandonment gas as inconsistent with those standards. Panhandle had then filed a revised allocation plan that "clearly makes no real attempt to meet the standards of [the abandonment] order" (Pet. App. 70a). It was thus obvious that further proceedings would be required to determine the appropriate distribution of the abandonment gas in light of the standards of the abandonment order, as the Commission itself subsequently held.

It was in light of these circumstances, and with specific reference to the standards of the abandonment

order that Michigan Consolidated submitted its settlement proposal. The Commission's Rules of Practice and Procedure provide that such a proposal may be made "at any time." (18 C.F.R. § 1.18). The matter of distributing the abandonment gas was then before the Commission for consideration. Indeed, in the very order of February 13, 1959 rejecting the settlement proposal the Commission set a hearing

> "* * * to enable all properly interested parties to present plans and evidence with respect to the disposition of Panhandle's gas in conformity with the standards of our order of December 19, 1958" (Pet. App. 70a-71a).

However, Michigan Consolidated, the only party to have formulated such a proposal, was specifically excluded from the proceeding and its proposal rejected "whatever its virtues" (Pet. App. 71a).

In sum, Michigan Consolidated's settlement proposal was not an attack upon the Commission's December 19, 1958 abandonment order and did not constitute an "objection to the order of the Commission" which must be urged in an application for rehearing under Section 19(b) of the Act.[7] Quite the contrary, the settlement proposal was expressly based upon the standards of the abandonment order and proposed a method of distribution of the abandonment gas in accordance with those standards (Pet. App. 33a).

The question of the distribution of the abandonment gas was admittedly before the Commission having been

[7] As previously stated, Michigan Consolidated filed a timely application for rehearing in which it set forth its objections to the December 19, 1958 order and those were the grounds upon which it subsequently sought review of that order.

postponed for future decision by the abandonment order itself. Hearings were subsequently held on that very matter. The Commission was clearly in a position to consider the merits of Michigan Consolidated's settlement proposal.

The Commission's action with respect to the settlement proposal was also properly before the Court of Appeals. The order rejecting that proposal out of hand was issued on February 13, 1959 (Pet App. 53a-76a). Within thirty days Michigan Consolidated filed an application for rehearing of that order with the Commission and after rejection of that application filed a petition to review with respect thereto in the Court of Appeals (No. 15,144) and the Commission itself conceded with respect to this matter that "petitioner properly invokes this court's jurisdiction under Section 19 of the Natural Gas Act" (Pet. App. 35a-36a).

Panhandle hardly pretends that the question here presented is a broad or recurring one. The Court of Appeals held only that "* * * in the special circumstances of this case, the Commission erred in brushing aside the settlement proposal" (Pet. App. 36a). Panhandle itself states that the question it asks this Court to decide is "whether the Federal Power Commission is required to consider a 'settlement proposal' *in the circumstances of this case*" (Pet. 12, italics supplied). Obviously, a determination of that question by this Court could extend no farther than the complicated and unusual facts of this case.

II.

THE COURT'S TREATMENT OF THE "DEMAND-CAPACITY RATIO" QUESTION WAS ENTIRELY FAIR AND PROPER

Panhandle urges as its second point that the Court below erred in concluding that it need not pass on objections raised by Michigan Consolidated to a so-called "demand-capacity ratio" test, which was first referred to by the Commission in its February 13, 1959 order denying rehearing on the abandonment order of December 19, 1958 (Pet. 18-20). Since the Court below refrained from passing upon the objections in order "to allow initial consideration [of the objections] by the Commission" (Pet. App. 24a), Panhandle's argument on this point is difficult to fathom.

In its abandonment order of December 19, 1958, the Commission had placed principal emphasis upon comparative space heating saturations as the basis for its determination of the comparative needs of Michigan Consolidated and Panhandle's other customers for additional gas. The comparison of space heating saturations was referred to as an "objective way to approach this problem" (Pet. App. 49a), and the Commission's December 19, 1958 order was based upon a finding that:

> "The lesser saturation on the systems of the customers dependent entirely on Panhandle service shows that Panhandle's gas can be used to greater advantage on the systems of these customers than by Michigan Consolidated" (Pet. App. 50a).

In their petitions for rehearing, Michigan Consolidated and other parties pointed out a number of respects in which the Commission had incorrectly ap-

plied the test of relative space heating saturations. In its February 13, 1959 order denying rehearing the Commission, after briefly noting these objections, undertook to compare the peak day capacities and peak day demands on the two systems. However, while the ratio of capacity to demand on Panhandle's system was found to be lower than on the American Natural system, the Commission made no specific finding and reached no specific conclusion with respect thereto (Pet. App. 57a-60a).

In the Court of Appeals Michigan Consolidated and other parties strongly objected to this aspect of the Commission's order, pointing out that it was based upon information taken from other cases to which they were not parties and upon evidence not subjected to cross-examination. They also emphasized the fact that the use of such a "test" for abandonment had never been suggested by anyone at any time and that it appeared for the first time in the Commission's order denying rehearing, thus precluding the parties from any opportunity to meet or rebut the matters relied upon by the Commission.

The Court of Appeals found it unnecessary to rule on these objections. In view of the invalidity of the Commission's comparison of space heating saturations and the necessity for further proceedings upon remand, the Court concluded that the Commission should be given the opportunity to consider the objections to the capacity-demand comparison in the first instance (Pet. App. 24a).

Panhandle treats the Court's action as if it were a broad refusal to give effect to alternative findings made by an agency upon rehearing. Of course, it was

nothing of the kind. The principal basis of the Commission's original decision was the comparison of space heating saturations. Since the Commission improperly applied its principal criterion of comparative space heating saturations, and remand of the cause was necessary for that and other reasons, the Court's refusal to consider the objections to the use of the demand-capacity ratio was the essence of sound judicial discretion.

The Court's action was the antithesis of the "mechanistic approach" attributed to it by Panhandle (Pet. 19). Certainly the Court could not assume that the Commission would simply discard its space heating saturation test in favor of the demand-capacity ratio criterion, if, upon a proper comparison of space heating saturations, a contrary result was indicated.[14] It was therefore not only appropriate but essential that both criteria be reconsidered by the Commission upon the remand.

CONCLUSION

The petition for certiorari involves no conflict of decisions, no question of statutory interpretation, no important question of administrative law and no judicial action even remotely justifying the exercise of this Court's supervisory powers. The Court below carefully considered the difficult and complex record in this case, and rendered a decision that gives full effect to the Commission's prerogatives, the rights of the

[14] That this was a very real possibility, if the space heating saturations of Michigan Wisconsin's other customers were considered in the comparison, as they must be, was demonstrated by the Court below (Pet. App. 20a-21a).

parties, and most importantly the public interest. The petition for certiorari should be denied.

Respectfully submitted,

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